

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF UTAH, IN AND FOR DUCHESNE
COUNTY

SAND WASH IRRIGATION CO.,
a corporation,

Plaintiff,

vs.

IRA B. CANNON, FRED CASE, GEORGE
POTTS, PERCY POTTS, N. J. MITCHELL,
PARLEY G. MITCHELL, AMBROSE MITCHELL
and OSCAR NELSON,

Defendants.

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

The above entitled cause came on duly and regularly to be heard this 29th day of June, A. D. 1936, before the above entitled Court, sitting without a jury, none of the parties hereto having demanded a jury, upon the verified complaint of the plaintiff, Sand Wash Irrigation Co., a corporation, the answer and cross-complaint of the Dry Gulch Irrigation Company, the answer and affirmative defense of Ira B. Cannon and Fred Case, the answer and affirmative defense of George Potts and Percy Potts, the answer and affirmative defense of N. J. Mitchell, Parley G. Mitchell and Ambrose Mitchell, and the answer and affirmative defense of Oscar Nelson, the replies of the plaintiff and the replies of the Dry Gulch Irrigation Co., A. V. Watkins, Esq., appearing as counsel for the plaintiff, and Ray E. Dillman, Esq., appearing as counsel for the Dry Gulch Irrigation Co., a corporation, and Brockbank and Pope, by M. B. Pope, appearing as counsel for the defendants, Ira B. Cannon and Fred Case in their separate defense; George Potts and Percy Potts in their separate defense; Parley G. Mitchell, N. J. Mitchell and Ambrose Mitchell in their separate defenses; and Oscar Nelson in his separate defense, and said cause proceeded in trial to and including the 3rd day of June,

A. D. 1936, and the Court, having heard the testimony of the witnesses presented by each and all of the parties hereto, and having taken the matter under advisement, and having considered the briefs and arguments of the respective parties hereto, and being fully advised in the premises, now finds the following facts,-

1. That the plaintiff, Sand Wash Irrigation Co. is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Ioka, Duchesne County, State of Utah; and that the Dry Gulch Irrigation Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Roosevelt, Utah.

2. That on June 12, 1914, M. J. Benson duly filed in the office of the State Engineer of Utah, his application to appropriate seven second feet of water from Sand Wash in Duchesne County, State of Utah, for irrigation purposes; which said application is designated in the office of the State Engineer of the State of Utah as filing No. 5772. That thereafter, to-wit: on the _____ day of _____, 1924, the said M. J. Benson duly assigned said application to the Sand Wash Irrigation Co., a corporation, the plaintiff in this action. That certificate #2039, dated January 5, 1932, showing proof of work done and proof of beneficial use of the water under said application is on file in said State Engineer's office.

3. That on September 28, 1916, the Dry Gulch Irrigation Co., a corporation, filed in the office of the State Engineer of the State of Utah, its application to appropriate 25 second feet of water from Sand Wash, in said County and State; which said application is designated in the office of the State Engineer of the State of Utah as filing No. 6960.

That certificate No. 2063 issued March 11, 1932, showing proof of work done and proof of beneficial use of water under said application is on file in said State Engineer's office.

4. That on May 3, 1917, Nathaniel J. Mitchell, duly filed in the office of the State Engineer of Utah, his application No. 7282 to appropriate 78/100 second foot of water from Sand Wash in said County and State, and that thereafter, on the 1st day of May, 1922, said application lapsed, and thereafter, on August 10, 1926, said application was reinstated, with the priority brought down to August 10, 1926.

That certificate No. 1567, issued January 12, 1928, showing proof of work done and proof of beneficial use of water under said application, is on file in the office of said State Engineer.

5. That on the 6th day of July, 1917, George Potts filed in the office of the State Engineer of Utah, his application to appropriate 5/10 of a second foot of water from Sand Wash in said County and State.

That certificate No. 1618 issued June 22, 1928, showing proof of work done and proof of beneficial use of water under said application, is now on file in the office of said State Engineer.

That on the 1st day of July, 1920, said application lapsed and was reinstated on August 16, 1926, with the priority brought down to August 16, 1926.

6. That on the 23rd day of September, 1918, Ira B. Cannon and Fred Case, filed in the office of the State Engineer of Utah, their application to appropriate 1-1/8 second feet of water from Blood Draw in Duchesne County, State of Utah, which naturally drains into the Sand Wash in said County and State.

That certificate No. 1378, issued November 19, 1928, showing proof of work done and proof of beneficial use of the water under said application is now on file in the office of the said State Engineer.

7. That on the 11th day of November, 1926, Oscar Nelson filed his application in the office of the State Engineer of Utah, to appropriate 6/10 second feet of water from Sand Wash in said County and State, for irrigation purposes.

That certificate No. 1654 issued June 22, 1928, showing proof of work done and proof of beneficial use of the water under said application, is now on file in the office of the said State Engineer.

8. That each and all of the parties to this action are now the owners and holders of the respective applications and certificates of appropriation as above set forth.

9. That Sand Wash is a natural stream extending from its junction with Dry Gulch near Roosevelt, in Duchesne County, State of Utah, in a westerly and northwesterly direction up over the Altonah Bench, a distance of approximately 28 miles, and the flow of water in said Sand Wash varies according to the season of the year, from practically nothing in November of dry years, to 35 or 40 second feet in the spring, during the melting of snow, the main channel being fed by run-ins during the melting of the snow from side draws, none of which have any regular flow fed by springs, except what is known and referred to as the Blood Draw.

10. That in the year 1905 there was no water in the Blood Draw except from melting snows in the early spring. That by reason of the irrigation of the lands on the Altonah Bench and the canal built by the government for the use of the Indians on the former Uintah Indian Reservation, from North of Altonah to South of Mt. Emmons, in Duchesne County, Utah, waters percolate through the soil and appear at the surface in what is known as the Blood Draw. That across the Altonah Bench, are two or three canals, the Dry Gulch Irrigation Co. having constructed one, and the U. S. Indian Department, for the use and benefit of the Indians on the former reservation, having constructed one, which is known as the Indian canal. That the Indian Canal runs in a southerly direction down the Altonah Bench at or near the head of the Blood Draw.

11. That prior to the construction of said canals and the irrigation of the lands on the Altonah Bench, Blood Draw was dry except

during the melting of snow. That about 1909 wet spots and seeps began to appear in the Blood Draw from the Indian canal and the irrigation of the farms and adjoining lands lying west and north of the Blood Draw. This wet or seep area, in both the north and south parts of the Blood Draw, gradually increased until in 1913 enough water percolated into the bottom of the Draw to flow, when at its maximum, about 100 yards down the Draw about a fourth of a mile or a little more, up the Draw from its junction with the main channel of the Sand Wash. About 1919 the seepage had increased sufficiently to flow, if undisturbed, when at its maximum, down to the main channel.

12. About 1914 the defendants, Ira B. Cannon and Fred Case, with the permission and consent of the owner of the Blood farm, constructed a ditch from the forks of the Blood Draw at the bottom of the Hartman and Pearson farms, over the hill-side onto lands of said defendants Cannon and Case, thereby intercepting the seepage or percolating waters from the aforesaid farm in the head of the Blood Draw, and applying the same to beneficial use, which use has been constant since that time, for the irrigation of their lands.

13. That the interception of this seepage or percolating water was with the approval and consent of the owners of the lands on which the Blood Draw is situated. That the interception and use of this percolating water was with the approval and consent of Chester Hartman and August Pearson, who owned the farms directly west and north of the Blood Draw where said percolating waters come to the surface. The flow thus appropriated varied according to the amount of seep or percolation in the head of the Draw from as low as 1/4 second foot to 1-1/2 second feet. Of recent years, the flow in Blood Draw has increased to perhaps three second feet, all of which, except that diverted by Cannon and Case, flowed into and is comingled with the waters of Sand Wash at a point above the point of diversion of all of the parties to this action except the defendants Cannon and Case.

WHEREFORE, from the foregoing Findings of Fact, the Court now makes the following,-

CONCLUSIONS OF LAW

1. That the waters claimed by the defendants Cannon and Case, to-wit: 1-1/8 second feet, at the time they appropriated the same, about 1914, was and at all times since has been and now is, percolating water, and that Cannon and Case, who now own most of the land upon which said waters arise, are the owners of said water and they are entitled to a Decree quieting their title against the plaintiff and all of the other defendants herein, to 1-1/8 second feet of water from Blood Draw at their present points of diversion from January 1, to December 31, inclusive, of each and every year.

2. That the plaintiff, Sand Wash Irrigation Company is entitled to seven second feet of water from Sand Wash at their present points of diversion, from March 15th to December 1st of each year, against all of the defendants above named, except the rights of the defendants Cannon and Case to the 1-1/8 second feet from Blood Draw.

3. That the defendant, Dry Gulch Irrigation Co., is entitled to 10 second feet of water from the Sand Wash from April 1st to October 31st, of each year, at its present point of diversion, and to have its title thereto quieted against all of the parties to this action, subject only to the priority of the defendants, Cannon and Case, and the plaintiff, Sand Wash Irrigation Co.

4. That subject to the rights of the foregoing parties, whose priorities are established, the defendant, Oscar Nelson, is entitled to 6/10 second foot of water from Sand Wash from March 15th to October 15th, at his present point of diversion.

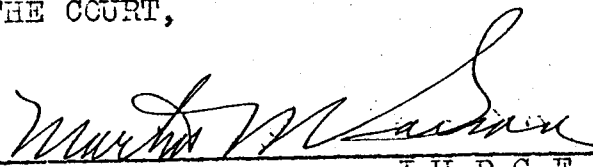
5. That after the foregoing rights have been satisfied, the defendant Nathaniel J. Mitchell is entitled to receive 78/100 of a second foot of water from said Sand Wash at his present point of diversion.

6. That subject to the rights of the foregoing parties, whose priorities are established, the defendant, George Potts, is entitled to the use of 5/10 second feet of water from Sand Wash.

7. That the parties hereto and each of them are entitled to have the rights to the use of waters as above set forth, quieted and confirmed as above set forth, and each and all of the respective parties are hereby enjoined from interfering with the rights and priorities of each and all of the other parties as hereinabove set forth, each party to this action to pay his or its own costs.

Dated this 29th day of June, A. D. 1936.

BY THE COURT,


J U D G E.

Received a copy of the foregoing Findings of Fact and Conclusions of Law this 3rd day of September, A. D. 1936.